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Appellants:	Earl David Brock et al.	Docket No.:	16,905
Serial No.:	10/028,338	Group:	3761
Confirmation No.:	2861	Examiner:	Kidwell, Michele M.
Filed:	December 22, 2001	Date:	July 20, 2006
For:	SYSTEM FOR IMPROVING SKIN HEALTH OF ABSORBENT ARTICLE WEARERS		

Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on May 22, 2006.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), which is due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

EARL DAVID BROCK ET AL..

By: 

David J. Arleman

Registration No.: 44,512

CERTIFICATE OF TRANSMISSION

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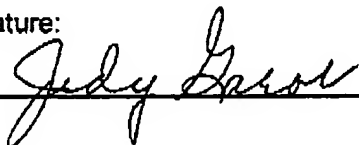
**Brief on Appeal to the Board of Patent Appeals
and Interferences (17 pages including this page)**

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CENTRAL FAX CENTER****JUL 20 2006**

Appellants: Earl David Brock et al. Docket No.: 16,905
Serial No.: 10/028,338 T.C./A.U.: 3761
Confirmation No: 2861 Examiner: Kidwell, Michele M
Filed: December 22, 2001 Date: July 20, 2006

For: **SYSTEM FOR IMPROVING SKIN HEALTH OF ABSORBENT ARTICLE
WEARERS**

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Kidwell's **Final Rejection** of claims 1-23 which was mailed on February 23, 2006.

On May 22, 2006, Appellants, pursuant to 37 C.F.R. 41.31, mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on July 22, 2006.

Real Party in Interest

The present Application has been assigned to the Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no related Appeals and Interferences.

Status of the Claims

07/21/2006 MBINAS 00000037 110875 10028338

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Claims 1-23 remain in the application with claims 1-23 being finally rejected. A copy of the appealed claims appears in the CLAIMS APPENDIX of this Brief.

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Status of Amendments Filed Subsequent to Final Rejection

No amendments were filed after the final Office Action mailed February 23, 2006.

Summary of the Invention for Each Independent Claim

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

The invention of Independent claim 1 is directed to a system for improving skin health of a wearer of absorbent articles. The system includes a **disposable absorbent article** used in conjunction with a **wet wipe**. (See e.g., page 4, lines 1-9 of the Specification as originally filed.) The present invention delivers both non-aqueous and hydrophilic compositions to the skin of persons wearing disposable absorbent articles. The non-aqueous and hydrophilic compositions work together to provide benefits not achievable through their use by themselves. (See e.g., page 13, lines 3-9; page 51, lines 11-16; page 53, lines 34-37; and page 54, lines 3-7 of the Specification as originally filed.)

The **disposable absorbent article** includes an outer cover 20; a liquid permeable bodyside liner 22 and an absorbent body 24 that is located between the bodyside liner and the outer cover. (See e.g., Fig. 1 and page 14, lines 17-20 of the Specification as originally filed.) The disposable absorbent article further includes a skin care composition on the bodyside liner. (See e.g., page 27, lines 9-12 of the Specification as originally filed.) The skin care composition includes about 40 to about 95 percent by weight of an emollient and from about 5 to about 60 percent by weight of viscosity enhancer. (See e.g., page 28, lines 13-25 and page 29, lines 20-30 of the Specification as originally filed.)

The **wet wipe** includes a nonwoven substrate and a skin care solution. The skin care solution includes from about 90 to about 99 percent by weight of hydrophilic solvent, from 0 to about 30 percent by weight of surfactant and from about 0.1 to about 10 percent by weight of extracted botanical active. (See e.g., page 40, lines 8-10; page 40, lines 16-17; and page 41, lines 27-28 of the Specification as originally filed.)

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The invention of Independent claim 23 is directed to a system for improving skin health of a wearer of absorbent articles. The system includes a disposable absorbent article having a skin care composition used in conjunction with a wet wipe having a skin care solution as does Independent claim 1. However, Independent claim 23 further requires the absorbent article 10 to include a front waist section 12, a rear waist section 14 and an intermediate section 16 that interconnects the front and the rear waist sections. Additionally, Independent claim 23 requires the absorbent body to include superabsorbent material. (See e.g., page 14, lines 10-12; Fig. 1; and page 19, lines 5-8 of the Specification as originally filed.)

Statement of Each Ground of Rejection Presented For Review

Ground 1

Claims 1-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 4,738,678 to Paulis (hereinafter "Paulis"), in view of U.S. publication 2003/0077307 to Klofta et al. (hereinafter "Klofta") and further in view of U.S. patent US 5,648,083 to Blieszner et al. (hereinafter "Blieszner").

Argument

For the reasons set forth below, Appellants respectfully submit that claims stand or fall together and the Examiner's rejection should be reversed.

Ground 1

It is respectfully submitted that Claims 1-23 are patentable over Paulis in view of Klofta and further in view of Blieszner because a *prima facie* case of obviousness has not been established. In order to establish a *prima facie* case of obviousness, three basis criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. §2143. The Examiner bears the initial burden of establishing the *prima facie* case. See *In re Piasecki*, 223 U.S.P.Q. 785, 787, 745 F.2d 1468, 1471 (Fed.

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Cir. 1984). Appellants respectfully submit that the combination of Paulis, Klofta, and Blieszner does not teach all the limitations of the invention as claimed in claims 1 and 23. Further, there is no suggestion or motivation to combine the references.

With respect to claim 1, the Examiner states that

Paulis discloses an absorbent article used in conjunction with a wet wipe as set forth in the abstract and in the figures. The difference between Paulis and claim 1 is [the] provision that the article include a skin care composition and the wet wipe include a skin care solution. (2/23/2006 Office Action at page 2) (emphasis added).

In other words, the Examiner concludes that the use of a wipe and an absorbent article is known but acknowledges that no synergistic system of a skin care composition on an article and a skin care solution on a wipe is taught by Paulis.

The Examiner attempts to cure part of this acknowledged deficiency by adding Klofta to provide a skin care composition on an absorbent article. Specifically, the Examiner states that

It would have been obvious to one of ordinary skill in the art to modify the topsheet of Paulis to provide a skin care composition because the skin care composition is useful for protecting the skin as taught by Klofta in the abstract. (2/23/2006 Office Action at page 3).

The Examiner attempts to cure the remaining portion of this acknowledged deficiency by adding Blieszner to provide a skin care solution on a wet wipe. Specifically, the Examiner states that

It also would have been obvious to one of ordinary skill in the art to modify the wipe of Paulis to provide a skin care solution because the skin care solution provides effective protection against perineal dermatitis as taught by Blieszner in col. 1, lines 1 – 35. (2/23/2006 Office Action at page 3).

Despite these assertions, no *prima facie* case of obviousness has been established because the combination of references does not teach or suggest a system comprising a disposable absorbent article with a specific skin care composition on the bodyside liner used in conjunction with a wet wipe having a specific skin care solution as required by Appellants' claims. Appellants' invention demonstrates that skin care excipients having non-aqueous properties can be delivered in the skin care composition of an absorbent article and skin care excipients (such as extracted botanicals) having better efficacy in a hydrophilic system can be

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delivered in the skin care solution of a wet wipe without interfering with each other. (See e.g., page 4, lines 1-9; page 13, lines 3-9; page 49, lines 11-17; page 51, lines 12-16; page 52, lines 30-37; and page 53, line 37 through page 54, line 7.) None of the cited references, alone or in combination, teach or suggest a system that leverages the chemistries associated with each medium of the system to deliver benefits to the wearer's skin as does Appellants' invention. Additionally, the Examiner has provided no suggestion or motivation as to why one skilled in the art would combine these three references.

The Examiner merely recites a purported benefit of Klofta, i.e., to protect the skin, and summarily concludes that this is adequate motivation to combine Klofta with Paulis. The Examiner has provided no citation in either Klofta or Paulis to indicate that one skilled in the art would be motivated to take the composition of Klofta and add it to the topsheet of Paulis.

Similarly the Examiner merely recites a purported benefit of Blieszner, i.e., to provide protection against dermatitis, and summarily concludes that this too is adequate motivation to combine Blieszner with Paulis. However, the Examiner has provided no motivation as to why one skilled in the art would take the second, and seemingly redundant, step of modifying the skin care solution of the wipe, as per Blieszner, when the skin care composition has already been added to the diaper, as per Klofta, to "protect the skin."

In other words, the Examiner has provided no citation to Paulis, Klofta or Blieszner to indicate that one skilled in the art would be motivated to combine all three references to create a synergistic system comprising both a disposable absorbent article with a specific skin care composition on the bodyside liner and a wet wipe having a specific skin care solution.

It appears that the Examiner is relying on impermissible hindsight to find Appellants' invention by piecing together the prior art. The teaching, suggestion, or motivation for the modification or combination and the reasonable expectation of success must both be found in the prior art and cannot be based on an applicant's disclosure. M.P.E.P. §§ 2142, 2143. The Examiner has cited no teaching, suggestion, or motivation to lead one skilled in the art to (1) select the specific skin care composition of Klofta and (2) the specific skin care solution of Blieszner and (3) twice modify the diaper and wipe combination of Paulis. The fact that the references *can* be modified or combined does not render the resultant modification or

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combination obvious unless the prior art teaches or suggests the desirability of the modification or combination. M.P.E.P. §§ 2142, 2143.

The Examiner concludes that,

Paulis provides the general knowledge in the art of providing a diaper that is used in conjunction with a wet wipe. The **substitution** of these **essential** working parts in order to provide the most **effective product** is within the level of ordinary skill in the art. (2/23/2006 Office Action at page 3, emphasis added).

Appellants respectfully disagree with this assertion for several reasons. First, the modification of the topsheet of Paulis with the composition of Klofta is an "addition", NOT a "substitution", as suggested by the Examiner because Paulis does not teach a topsheet with a skin care composition. Therefore, neither Klofta nor Paulis, alone or in combination, teach a system comprising a disposable absorbent article with a specific skin care composition on the bodyside liner used in conjunction with a wet wipe having a specific skin care solution.

Second, the modification of the wipe of Paulis with the skin care solution of Blieszner is also an "addition", NOT a "substitution", because Paulis does not teach a wipe with a skin care solution. Paulis teaches a premoistened wipe for cleaning the user, i.e., a cleaning device. (col. 1: ll. 19, 20 and col. 3, ll. 19, 20). Therefore neither, Paulis nor Blieszner, alone or in combination, teach a system comprising a disposable absorbent article with a specific skin care composition on the bodyside liner used in conjunction with a wet wipe having a specific skin care solution.

Third, the Examiner has failed to make a *prima facie* case that one skilled in the art would consider these "essential working parts" because the Examiner has failed to find the "parts" of any "system" but has instead found "parts" of various "products" and has pieced them together based on Appellants' disclosure. The combination of Paulis, Klofta, and Blieszner provides no teaching of a complete synergistic system including an absorbent article having a specific skin care composition on the bodyside liner used in conjunction with a wet wipe having a specific skin care solution.

Finally, there is no teaching or suggestion in the cited references of the synergistic skin benefits of an absorbent article having a specific chemistry used in conjunction with a wet wipe having a specific chemistry. Therefore, one skilled in the art would not be motivated "to

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provide the most effective product" by making the proposed combination because the cumulative benefit was not known before Appellants' disclosure.

Therefore, no *prima facie* case of obviousness has been made because the prior art references do not teach or suggest all the claim limitations; i.e., a system comprising a disposable absorbent article with a specific skin care composition on the bodyside liner used in conjunction with a wet wipe having a specific skin care solution as required by Appellants' claims.

Additionally, or alternatively, no *prima facie* case of obviousness has been made because there is no motivation to combine these three references.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims 1-23 has been shown to be untenable and should be reversed by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

EARL DAVID BROCK ET AL.

By: 

David J. Arterman

Registration No.: 44,512

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Appendix – The Claims On Appeal

The claims on appeal are:

1. (original) A system for improving skin health of a wearer of absorbent articles comprising:
 - (a) a disposable absorbent article that includes an outer cover; a liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover; an absorbent body that is located between the bodyside liner and the outer cover; and a skin care composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 40 to about 95 percent by weight of emollient and from about 5 to about 60 percent by weight of viscosity enhancer; used in conjunction with
 - (b) a wet wipe that includes a nonwoven substrate and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent, from 0 to about 30 percent by weight of surfactant and from about 0.1 to about 10 percent by weight of extracted botanical active.
2. (original) The system of claim 1, wherein at least one wet wipe is used when the disposable absorbent article is removed from the wearer.
3. (original) The system of claim 1, wherein at least one wet wipe is used before the disposable absorbent article is applied to the wearer.

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4. (previously presented) The system of claim 1, wherein a combination of the absorbent article and the wipe is used at least one time a day.
5. (previously presented) The system of claim 1, wherein a combination of the absorbent article and the wipe is used at least two times a day.
6. (original) The system of claim 1, wherein the emollient of the skin care composition is selected from petrolatum, vegetable based oils, mineral oils, dimethicone, lanolin, glycerol esters, alkoxyated carboxylic acids, alkoxyated alcohols, fatty alcohols and mixtures thereof.
7. (original) The system of claim 1, wherein the viscosity enhancer of the skin care composition is selected from polyolefin resins, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, natural clays, synthetic analogs of natural clays, organically modified clays, quaternary modified clays, quaternary starch compounds, polyethylene, silica, silica silylate, silica methyl silylate, colloidal silicone dioxide, alkyl hydroxy ethyl cellulose, microcrystalline wax, shellac wax, hexadecyl cosanyl hexacosanate, C₂₀-C₄₀ alkyl hydroxystearyl stearate, glycol montanate, ozokerite wax, polyperfluoromethylisopropylether montan wax, magnesium aluminum silicate, polymethacrylate polymers, polystyrene copolymers and mixtures thereof.
8. (original) The system of claim 1, wherein the skin care composition further includes from about 5 to about 55 percent by weight of solidifying agent.

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9. (original) The system of claim 8 wherein the solidifying agent of the skin care composition is selected from beeswax, behenyl behenate, behenyl benzoate, branched esters, candelilla wax, carnauba wax, synthetic carnauba wax, PEG-12 carnauba wax, cerasin, microcrystalline wax, hydrogenated microcrystalline wax, hexadecylcosanyl hexacosanate, polyperfluoromethylisopropylether montan wax, alkylmethylsiloxanes, glycol montanate, jojoba wax, lanolin wax, ozokerite, paraffin, synthetic paraffin, polyethylene, C₂₀-C₄₀ alkyl hydroxystearyl stearate, C₃₀ alkyl dimethicone, cetyl esters, zinc stearate, shellac wax, hydrogenated cottonseed oil, hydrogenated squalene, hydrogenated jojoba oil and mixtures thereof.

10. (original) The system of claim 1 wherein the skin care composition further includes from about 0.1 to about 55 percent by weight of natural fats or oils.

11. (original) The system of claim 10, wherein the natural fat or oil is selected from Avocado Oil, Apricot Oil, Babassu Oil, Borage Oil, Camellia Oil, Canola Oil, Castor Oil, Coconut Oil, Corn Oil, Cottonseed Oil, Evening Primrose Oil, Hydrogenated Cottonseed Oil, Hydrogenated Palm Kernel Oil, Maleated Soybean Oil, Meadowfoam Oil, Palm Kernel Oil, Peanut Oil, Rapeseed Oil, Safflower Oil, Sphingolipids, Sweet Almond Oil, Tall Oil, Lauric Acid, Palmitic Acid, Stearic Acid, Linoleic Acid, Stearyl Alcohol, Lauryl Alcohol, Myristyl Alcohol, Behenyl Alcohol, Rose Hip Oil, Calendula Oil, Chamomile Oil, Eucalyptus Oil, Juniper Oil, Sandlewood Oil, Tea Tree Oil, Sunflower Oil, Soybean Oil and mixtures thereof.

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12. (original) The system of claim 1 wherein the skin care composition further includes from about 0.1 to about 10 percent by weight of sterols or sterol derivatives.

13. (original) The system of claim 12, wherein the sterol or sterol derivative is selected from cholesterol, sitosterol, stigmasterol, and ergosterol, as well as, C₁₀-C₃₀ cholesterol/lanosterol esters, cholecalciferol, cholesteryl hydroxystearate, cholesteryl isostearate, cholesteryl stearate, 7-dehydrocholesterol, dihydrocholesterol, dihydrocholesteryl octyldecanoate, dihydrolanosterol, dihydrolanosteryl octyldecanoate, ergocalciferol, tall oil sterol, soy sterol acetate, lanasterol, soy sterol, avocado sterols, sterol esters and mixtures thereof.

14. (original) The system of claim 1, wherein the surfactant of the skin care solution has a HLB range of from about 7 to about 18.

15. (original) The system of claim 14, wherein the surfactant of the skin care solution is selected from emulsifying wax NF, glyceryl stearate, glyceryl stearate SE glycol stearate, glycol stearate SE, glycereth-20 Stearate, glyceryl behenate, glyceryl hydroxystearate, glyceryl laurate SE, glyceryl oleate, glyceryl oleate SE, propylene glycol oleate, propylene glycol oleate SE, propylene glycol stearate, propylene glycol stearate SE, sorbitan stearate, sorbitan trioleate, dimethicone copolyol, sodium cocoamphoacetate, disodium lauroamphodiacetate, disodium caprylamphodipropionate, cocamidopropyl betaine, cluramidopropyl betaine, octyl betaine, cocamidopropyl hydroxysultaine, diammonium lauryl sulfsuccinate, disodium dimethicone copolyol sulfosuccinate, diammonium laureth sulfosuccinate, sodium lauryl

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sulfate, sodium laureth sulfate, ammonium lauryl sulfate, TEA lauryl sulfate, polyoxyethylene hydrogenated castor oil and mixtures thereof.

16. (original) The system of claim 1, wherein the extracted botanical active of the skin care solution is selected from echinacea, yucca, willow herb, green tea, black tea, oolong tea, Chinese tea, constituents of tea extract and mixtures thereof.

17. (original) The system of claim 1, wherein the skin care solution further includes from about 0.1 to about 30 percent by weight of natural fats or oils.

18. (original) The system of claim 17, wherein the natural fats or oils are selected from avocado oil, apricot oil, babassu oil, borage oil, camellia oil, canola oil, castor oil, coconut oil, corn oil, cottonseed oil, evening primrose oil, hydrogenated cottonseed oil, hydrogenated palm kernel oil, maleated soybean oil, meadowfoam oil, palm kernel oil, phospholipids, rapeseed oil, palmitic acid, stearic acid, linoleic acid, stearyl alcohol, lauryl alcohol, myristyl alcohol, benenyl alcohol, rose hip oil, sunflower oil, soybean oil and mixtures thereof.

19. (original) The system of claim 1, wherein the skin care solution further includes from about 0.1 to about 10 percent by weight of sterol or sterol derivative.

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20. (original) The system of claim 19, wherein the sterol or sterol derivative is selected from cholesterol, sitosterol, stigmasterol, ergosterol, lanasterol, soy sterol, avocado sterols, cholesterol esters, sterol esters, lanolin and mixtures thereof.

21. (original) The system of claim 1, wherein the skin care solution further includes from about 0.1 to about 30 percent by weight of humectant.

22. (original) The system of claim 20, wherein the humectant is selected from acetamide MEA, aloe vera gel, arginine PCA, chitosan PCA, copper PCA, corn glycerides, dimethyl imidazolidinone, fructose, glucamine, glucose, glucose glutamate, glucuronic acid, glutamic acid, glycereth-7, glycereth-12, glycereth-20, glycereth-26, glycerin, honey, hydrogenated honey, hydrogenated starch hydrolysate, hydrolyzed corn starch, lactamide MEA, lactic acid, lactose lysine PCA, mannitol, methyl gluceth-10, methyl gluceth-20, PCA, PEG-2 lactamide, PEG-10 propylene glycol, polyamino sugar condensate, potassium PCA, propylene glycol, propylene glycol citrate, saccharide hydrolysate, saccharide isomerate, sodium aspartate, sodium lactate, sodium PCA, sorbitol, TEA-lactate, TEA-PCA, urea, xylitol and mixtures thereof.

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23. (previously presented) A system for improving skin health of a wearer of absorbent articles comprising:

(a) a disposable absorbent article comprising:

an outer cover;

a liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover;

an absorbent body that is located between the bodyside liner and the outer cover and includes superabsorbent material;

a front waist section, a rear waist section and an intermediate section that interconnects the front and the rear waist sections; and

a skin care composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 40 to about 95 percent by weight of emollient and from about 5 to about 60 percent by weight of viscosity enhancer; used in conjunction with

(b) a wet wipe that includes a nonwoven substrate and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent, from 0 to about 30 percent by weight of surfactant and from about 0.1 to about 10 percent by weight of extracted botanical active.

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Evidence Appendix

none

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Related Proceedings Appendix

none